

REMARKS & INTERVIEW SUMMARY

Applicants would like to thank the Examiner for the courtesies extended during the interview on June 2, 2003. During that interview, the Examiner, Mr. James Lilly, Esq. and the above-signed discussed the grounds of rejection and the various amendments and responses set forth herein. The Examiner preliminarily indicated that he believed these amendments and responses would place the application in condition for allowance.

Rejection under 35 U.S.C. § 112

The Examiner rejected the pending claims on the basis that there was insufficient antecedent basis for the phrase "the first retroreflector" used in the independent claims. The foregoing amendments address this issue by clarifying that the plane referred to is that of the rigid element or flap, respectively.

Rejection under 35 U.S.C. § 103

The Examiner rejected the independent claims under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,500,652 to Huber et al. in view of the prototype described in the declaration under Rule 132 filed on February 24, 2003.

As noted by Applicants in their response to the Examiner's October 8, 2002 office action, Huber et al. cannot serve as a basis for an obviousness rejection by operation of 35 U.S.C. § 103(c). Huber et al. and the invention claimed herein were under an obligation of assignment to the same party – American Electronic Sign – at the time the invention was made. The common assignment can be readily seen from the face of Huber et al. and U.S. Patent No. 5,790,088, the parent to the instant application.

While Applicants do not concede that the prototype described in the Rule 132 declaration may properly be considered prior art, the Applicants believe that the instant claims distinguish over that prototype. The independent claims have been amended to clarify that the layer of cube prism retroreflective elements is disposed on a front side of the apertured opaque rigid element such that light originating from a rear side of the opaque rigid element is substantially prevented from passing through the layer. In contrast, the prototype described in the Rule 132 declaration lacks any such structure. The Examiner preliminarily agreed that this subject matter distinguishes over the prototype.

Support for this amendment can be found throughout the application as filed, including at FIGS. 11, 12, 16, 17, 18A, 18B, and 18C and the accompanying description at page 14, lines 10-19 and page 16, line 10 to page 18, line 8.

The issue of whether the prototype can properly be applied as prior art is moot in view of the foregoing amendments. However, Applicants expressly reserve the right to contest any finding or assertion that the prototype described in the declaration filed February 24, 2003 is prior art to the instant application.

Examiner's Interview Summary

Applicants acknowledge receipt of the Examiner's interview summary. The Applicants do not concede that the claims pending at the time of the interview could be properly read on Huber '652. Nevertheless, the Applicants proposed alternate language that also distinguishes over Huber '652.

Applicants and Examiner discussed several possible amendments including verbiage such as "disposed on," "behind," and language to the effect that light originating from a rear side of the opaque rigid element is substantially prevented from passing through said layer. Applicants note that the proposed amendment identified in the interview summary appears to contain typographical errors and does not accurately reflect any specific amendment discussed with Applicants.

Conclusion

Applicants again thank the Examiner for his consideration of the foregoing arguments and remarks during the June 2, 2003 interview. If for some reason the instant response is not believed to place all claims in condition for allowance, kindly contact me at the above-specified number.